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# Apollo Detective, Inc. *and* Service Employees International Union, Local 1. Case 13–CA–61510

January 31, 2012

#### DECISION AND ORDER

## BY CHAIRMAN PEARCE AND MEMBERS HAYES AND GRIFFIN

The Acting General Counsel seeks a default judgment in this case on the ground that Apollo Detective, Inc. (the Respondent) has failed to file an answer to the consolidated complaint and compliance specification. Upon a charge filed by Service Employees International Union, Local 1 (the Union) on July 21, 2011, the Acting General Counsel issued the complaint, compliance specification, order consolidating complaint and compliance specification, answer requirement, and notice of consolidated hearing (the consolidated complaint and compliance specification) on September 27, 2011, against the Respondent, alleging that it had violated Section 8(a)(1) of the Act. The Respondent failed to file an answer.

On December 7, 2011, the Acting General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on December 8, 2011, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

#### Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. Similarly, Section 102.56 of the Board's Rules and Regulations provides that the allegations in a compliance specification will be taken as true if an answer is not filed within 21 days from service of the compliance specification. In addition, the consolidated complaint and compliance specification affirmatively stated that unless an answer was received by October 18, 2011, the Board may find, pursuant to a motion for default judgment, that the allegations in the consolidated complaint and compliance specification are true. Further, the un-

disputed allegations in the Acting General Counsel's motion disclose that the Region, by letter dated October 26, 2011, notified the Respondent that unless an answer was received by November 2, 2011, a motion for default judgment would be filed.<sup>2</sup> Nevertheless, the Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file an answer, we deem the allegations in the consolidated complaint and compliance specification to be admitted as true, and we grant the Acting General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

#### FINDINGS OF FACT

#### I. JURISDICTION

At all material times the Respondent, an Illinois corporation, with an office and place of business in Calumet Park, Illinois (the Respondent's facility), has been engaged in the business of providing security guard services at various locations.

During the calendar year preceding issuance of the complaint, a representative period, the Respondent, in conducting its business operations described above, provided security services in excess of \$50,000 to enterprises which are directly engaged in interstate commerce.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

#### II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Frank Rogers held the position of the Respondent's president, and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

About January 1, 2008, the Respondent and the Union entered into a collective-bargaining agreement covering certain of the Respondent's employees, which provides:

<sup>&</sup>lt;sup>1</sup> Although the Notice to Show Cause lists November 30, 2011, as the date on which the motion was filed, the motion was not properly filed with the Board until December 7.

<sup>&</sup>lt;sup>2</sup> As set forth in the Acting General Counsel's motion, the consolidated complaint and compliance specification was served by certified mail upon the last known address on file for the Respondent. The Respondent had previously received and accepted written communications addressed to that same address, as recently as September 23, 2011. The Respondent has not notified the Region that this address is no longer valid. However, the consolidated complaint and compliance specification was returned to the Region and marked "RETURN TO SENDER UNCLAIMED UNABLE TO FORWARD." It is well settled that a respondent's failure or refusal to accept certified mail or to provide for appropriate service cannot serve to defeat the purposes of the Act. See, e.g., *I.C.E. Electric, Inc.*, 339 NLRB 247, 247 fn. 2 (2003), and cases cited therein.

The Employer agrees to deduct in the first pay period of each month, from the pay of every employee who has executed and caused to be delivered to the Employer a written assignment, the regular monthly dues and the initiation fee and COPE contributions of the Union, if due and owing, in accordance with the constitution and bylaws of the Union. Where the employee, who is on check off, has insufficient earnings during the first pay period of the month, the deductions shall be made by the Employer from the next wage payment in accordance with billings furnished by the Union. A complete list of employees describing the deduction shall be submitted with each remittance.

From January 21 until it closed about July 17, 2011, the Respondent deducted union dues from its employees' paychecks pursuant to the dues-checkoff provision in the collective-bargaining agreement and employee checkoff authorizations.

From January 21 until it closed about July 17, 2011, the Respondent failed to remit to the Union the union dues it deducted from the employees' paychecks and retained the money for itself.

#### CONCLUSION OF LAW

By the conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act and engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) by failing, from January 21 until about July 17, 2011, to remit union dues to the Union that were deducted from the pay of unit employees pursuant to the collectivebargaining agreement and employee dues-checkoff authorizations, we shall order the Respondent to remit the withheld dues to the Union as required by the agreement and the employee dues-checkoff authorizations, and set forth in the consolidated complaint and compliance specification, with interest at the rate prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987), compounded daily as prescribed in Kentucky River Medical Center, 356 NLRB No. 8 (2010), enf. denied on other grounds sub nom. *Jackson Hospital Corp. v. NLRB*, 647 F.3d 1137 (D.C. Cir. 2011).<sup>3</sup>

Further, in view of the fact that the Respondent's facility is closed, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of its former unit employees in order to inform them of the outcome of this proceeding.

#### ORDER

The National Labor Relations Board orders that the Respondent, Apollo Detective, Inc., Calumet Park, Illinois, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Failing to remit to the Union any dues deducted pursuant to the terms of the collective-bargaining agreement
- (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Remit to the Union the union dues collected pursuant to the terms of the collective-bargaining agreement that the Respondent failed to remit between January 21 and July 17, 2011, with interest at the rate prescribed in *New Horizons for the Retarded*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra:

### Total Union Dues Owed: \$5348

(b) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix" to the Union and to all unit employees who were employed by the Respondent at its Calumet Park, Illinois facility at any time from January 21 until it ceased operations on July 17, 2011. In addition to physical mailing of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. <sup>5</sup>

<sup>&</sup>lt;sup>3</sup> The Regional Director has reserved the right to amend any or all provisions of the compliance specification by inclusion of information not now known to the Regional Director.

<sup>&</sup>lt;sup>4</sup> If the Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Mailed by Order of the National Labor Relations Board" shall read "Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

<sup>&</sup>lt;sup>5</sup> For the reasons stated in his dissenting opinion in *J. Picini Flooring*, 356 NLRB No. 9 (2010), Member Hayes would not require electronic distribution of the notice.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 31, 2012

Mark Gaston Pearce,	Chairman
Brian E. Hayes,	Member
Richard F. Griffin, Jr.,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

#### **APPENDIX**

NOTICE TO EMPLOYEES

MAILED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to mail and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail to remit to the Union any dues deducted pursuant to the terms of the collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL remit to the Union the union dues collected pursuant to the terms of the collective-bargaining agreement that we failed to remit between January 21 and July 17, 2011, in the amount of \$5348, plus interest.

APOLLO DETECTIVE, INC.